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In the

Supreme Court of the United States

October Term, 1966

No. 712

Joyce C. Thorpe,

Petitioner,

—v.—

Housing Authority of the City of Durham.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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There Was Not, and Was Not Permitted, a Fair and Adequate Hearing on the Reasons for Petitioner's Eviction in the North Carolina Courts

In response to the Petition for Writ of Certiorari, respondent Housing Authority contends that the writ should be denied because the petitioner had an opportunity to explore fully in the lower state courts the reasons for her eviction. Thus, respondent claims that, "The Petitioner had ample opportunity to examine and cross-examine the Executive Director of the Housing Authority . . . and . . . any other officers or agents of the Housing Authority with respect to any pertinent question involved in the proceedings including motives, if any, for the eviction" (Brief in Opposition, pp. 7-8).

This contention is not consistent with the decision below. The Court did not hold that petitioner had a right to a

hearing on the reasons, if any, for eviction. Rather, it held that, "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease," 148 S. E. 2d 290, 292 (1966) (Appendix to Petition for Writ of Certiorari, p. 4a). The court below held that the Public Housing Authority, like any private landlord, has an absolute, unconditional, and uncontrolled power to terminate a lease for any reason or for no reason.

It follows that petitioner, and any other tenant of a public housing project in North Carolina, has no right whatsoever to question an eviction; any inquiry as to the reason is immaterial and irrelevant, and does not have to be answered as a matter of state law. Not only was no adequate hearing given, but, in effect, no hearing at all, since if no reason need be given for the authority's action, there can be no opportunity to rebut it or determine its validity.

Petitioner claims she was evicted as retaliation for her tenant organizing activities. The Housing Authority replies that she was not put out for her organizing activities, but that it is not going to tell her what the reason was, or even if it had any. The "hearing" in the state courts was without substance, hardly even *pro forma,* and the petitioner was unable to counter a flat, unsupported denial. No tenant, under these rules, can possibly contest eviction for false or unconstitutional reasons, or any reasons. Indeed, under the state supreme court's decision, the Authority did not even have to deny that the reason was what Mrs. Thorpe claimed it was. If, on the other hand, the Authority were required to give her notice of a valid reason

and if the alleged grounds might be controverted, if that were appropriate, a hearing would acquire substance.[1]

The petitioner's claim is a simple one: that at some point before valuable benefits conferred by the state are terminated by administrative action, she must be given a fair and adequate hearing to inquire into the basis and justification for such action, if any. We need not now consider whether the hearing need be afforded within the agency or before the courts, but it surely must be afforded somewhere. Cf., *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U. S. 594, 598 (1950). As long, however, as the decision of the North Carolina Supreme Court stands, no such opportunity exists anywhere.

Thus, this case presents squarely the question of whether a public agency, engaged in furnishing decent housing to those otherwise financially unable to obtain it,[2] has the same powers as a private landlord, or whether the due process clause of the Fourteenth Amendment imposes duties and limitations on it that protect the rights of re-

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[1] This was precisely the result in *Holt* v. *Richmond Housing Authority* (E. D. Va., C. A. No. 4746 (1966)), cited at p. 10 of the Brief in Opposition. There, plaintiff alleged that he was being evicted because of his participation in a tenant's group. In response, the Housing Authority claimed the reason was that plaintiff had not reported all of his income, in violation of his lease. After a full hearing, the district court found that the ostensible reason was without basis, and concluded that the eviction had an improper motive.

[2] It is this factor that does, contrary to the contention of the respondent (Brief in Opposition, p. 12), raise a substantial question as to the validity of a lease provision that, as interpreted by the courts below, vests an unrestricted power to terminate an essential benefit at the whim of a governmental agency. The parties to the lease here have absolutely no equality of bargaining position. The would-be tenant must either accept whatever terms the state feels it wishes to impose or endanger the health and safety of herself and her children. See the cases and discussion in the Petition for Writ of Ceritorari, p. 17, n. 12.

cipients of the benefits it is charged by law to provide. In view of the great public importance of the issue and considering the questions of the applicability and interpretation of decisions of this and lower federal courts raised by the petition and the Brief in Opposition,[3] petitioner submits that it is essential that the petition be granted.

Respectfully submitted,

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[3] For example, the respondent argues that the school expulsion decisions such as *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), are not applicable to the present case (Brief in Opposition, p. 11). Petitioner, on the other hand, contends that they govern, in that they establish the right to procedural protections, including notice of reason and hearing, before essential benefits are terminated. (Petition for Certiorari, pp. 15, 17, n. 12). See also, *Swan* v. *Board of Higher Education of City of New York*, 319 F. 2d 56 (2nd Cir. 1963), in which the Second Circuit cited the *Dixon* case with approval, apparently distinguishing its earlier decision in *Steier* v. *New York State Education Commissioner*, 271 F. 2d 13 (2nd Cir. 1959), cited by Respondent in its brief at page 11.

